

ESTTA Tracking number: **ESTTA424107**

Filing date: **08/09/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	J.C. Newman Cigar Company
Granted to Date of previous extension	08/17/2011
Address	2701-03 Sixteenth Street Tampa, FL 33605 UNITED STATES

Attorney information	Jordan S. Weinstein Oblon, Spivak, McClelland, Maier & Neustadt, P.C. 1940 Duke Street Alexandria, VA 22314 UNITED STATES jweinstein@oblon.com, dbondurant@oblon.com, tmdocket@oblon.com Phone:703-413-3000
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### Applicant Information

Application No	85208551	Publication date	04/19/2011
Opposition Filing Date	08/09/2011	Opposition Period Ends	08/17/2011
Applicant	Sweet Mark, LLC 1909 Boyer Rd. Powhatan, VA 23139 UNITED STATES		

### Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Cigarettes; Cigars
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Bona fides of applicant's intent to use are not apparent.

### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3715612	Application Date	08/14/2008
Registration Date	11/24/2009	Foreign Priority Date	NONE
Word Mark	BRICK HOUSE		

Design Mark	BRICK HOUSE
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2009/08/09 First Use In Commerce: 2009/08/09 Cigars

Attachments	76692087#TMSN.gif ( 1 page )( bytes ) 380470US- Notice of Opposition.pdf ( 11 pages )(237260 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jsw/
Name	Jordan S. Weinstein
Date	08/09/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

_____	)	
J.C. NEWMAN CIGAR COMPANY,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	Application Serial No. 85/208,551
SWEET MARK, LLC,	)	Mark: STONEHOUSE
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

J.C. NEWMAN CIGAR COMPANY, a corporation duly organized and existing under the laws of Florida, located and doing business at 2701-03 Sixteenth Street, Tampa, Florida 33605 (hereinafter "Opposer"), believing that it will be damaged by registration, hereby opposes Application Serial No. 85/208,551, filed December 31, 2010, under the Trademark Act of 1946, in the name of SWEET MARK, LLC, (hereinafter "Applicant"), published for opposition in the *Official Gazette* of April 19, 2011, at Page TM 1136, for the mark STONEHOUSE.

The grounds of Opposition are as follows:

1. Opposer, J.C. NEWMAN CIGAR COMPANY, is a corporation duly organized and existing under the laws of Florida, having a corporate address of 2701-03 Sixteenth Street, Tampa, Florida 33605.

2. Prior to Applicant's filing date, Opposer engaged and is now engaged in the manufacture, distribution, sale, advertising, and promotion in interstate commerce of cigars and cigar accessories.

3. Prior to Applicant's filing date, Opposer used, and is now using Opposer's BRICK HOUSE mark on and in connection with cigars distributed and sold by Opposer in commerce.

4. Opposer is the owner of, and pursuant to Trademark Rule 2.122(d)(1) will rely herein upon, Registration No. 3,715,612, issued November 24, 2009 for the mark BRICK HOUSE for cigars.

5. Opposer's Registration No. 3,715,612 is valid and subsisting and is *prima facie* evidence of Opposer's exclusive right to use the mark in commerce on the goods specified in said registration. Copies of the USPTO's TARR and Assignment records for Opposer's above-identified registration are attached as Exhibit A.

6. Opposer will also rely herein on its common law rights in and to Opposer's BRICK HOUSE mark.

7. Upon information and belief, on December 31, 2011, Applicant filed an application for registration of the alleged STONEHOUSE mark for "cigarettes; cigars" in International Class 34. Said application was assigned Serial No. 85/208,551, and was published for Opposition in the *Official Gazette* of April 19, 2011, at Page TM 1136.

8. Applicant's Application Serial No. 85/208,551 is currently based on Applicant's asserted *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

9. Upon information and belief, Applicant did not make any use of the mark STONEHOUSE on or in connection with Applicant's goods prior to December 31, 2010.

10. Upon information and belief, Applicant did not make any use in interstate commerce of the mark STONEHOUSE on or in connection with Applicant's goods prior to December 31, 2010.

11. Applicant's mark STONEHOUSE is similar to Opposer's BRICK HOUSE mark.

12. Applicant's goods identified in its application are identical to and related to Opposer's goods identified in its Registration.

13. Upon information and belief, Applicant's goods, as identified in the application, and intended to be sold under the trademark STONEHOUSE, are or will be distributed in and through the same channels of trade, and/or sold to the same classes of purchasers of Opposer's goods under Opposer's BRICK HOUSE mark.

14. Opposer believes and alleges that consumers are likely to believe that STONEHOUSE identifies goods which originate with Opposer.

15. Opposer believes and alleges that Applicant's mark when applied to Applicant's goods is likely to cause confusion or mistake or to deceive and will deceive and mislead the purchasing public into believing that Applicant is licensed or controlled by Opposer or that Applicant is a subsidiary of or in some way related to or sponsored by Opposer, all in violation of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

16. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the STONEHOUSE trademark, as set forth in Applicant's Application Serial No. 85/208,551, in that the mark is confusingly similar to Opposer's BRICK

HOUSE mark and common law rights and will be used in connection with goods identical and related to the goods offered by Opposer.

17. Upon information and belief, the *bona fides* of Applicant's intent to use the STONEHOUSE mark are not apparent from materials of record in the subject application, and Opposer therefore challenges same and leaves Applicant to its proofs with regard to the nature and sufficiency of its intent to use the STONEHOUSE mark at the time of filing Application Serial No. 85/208,551, and at any time thereafter.

WHEREFORE, Opposer, J.C. NEWMAN CIGAR COMPANY, believes and avers that it is being and will continue to be damaged by registration of the STONEHOUSE mark as aforesaid, and requests that said Application Serial No. 85/208,551 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer has appointed JORDAN S. WEINSTEIN, a member of the law firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., a member of the Bar of the Commonwealth of Virginia, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

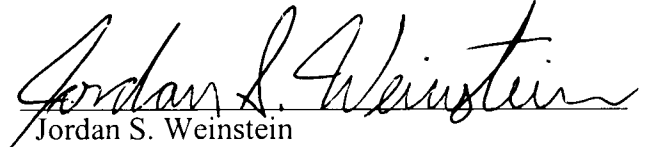
JORDAN S. WEINSTEIN  
OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P.  
1940 Duke Street  
Alexandria, Virginia 22314

We submit herewith the payment of the required filing fee for this Opposition. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-2014.

Respectfully submitted,

J.C. NEWMAN CIGAR COMPANY

By:



Jordan S. Weinstein

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, L.L.P.

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Alexandria, Virginia 22314

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e-mail: [tmdocket@oblon.com](mailto:tmdocket@oblon.com)

Counsel for Opposer

Dated: August 9, 2011

JSW/BAC/cli {5686655\_1.DOC}

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served on Applicant, with a courtesy copy served on counsel for Applicant, as identified by the records of the U.S. Patent and Trademark Office this 9<sup>th</sup> day of August, 2011, by sending same, via First Class mail, postage prepaid, to:

Sweet Mark, LLC  
1909 Boyer Rd.  
Powhatan, VA 23139

and

Christopher J. Mugel, Esquire  
Kaufman & Canoles, P.C.  
1051 E Cary St  
Richmond, VA 23219-4060

  
\_\_\_\_\_  
Debra L. Bondurant



# **EXHIBIT A**

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-08-05 14:13:38 ET

Serial Number: 76692087 Assignment Information Trademark Document Retrieval

Registration Number: 3715612

Mark

BRICK HOUSE

(words only): BRICK HOUSE

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2009-11-24

Filing Date: 2008-08-14

Transformed into a National Application: No

Registration Date: 2009-11-24

Register: Principal

Law Office Assigned: LAW OFFICE 109

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 650 -Publication And Issue Section

Date In Location: 2009-10-20

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. J.C. NEWMAN CIGAR COMPANY

**Address:**

J.C. NEWMAN CIGAR COMPANY

2701-03 Sixteenth Street

Tampa, FL 33605

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Florida

**GOODS AND/OR SERVICES**

**International Class:** 034

**Class Status:** Active

Cigars

**Basis:** 1(a)

**First Use Date:** 2009-08-09

**First Use in Commerce Date:** 2009-08-09

**ADDITIONAL INFORMATION**

(NOT AVAILABLE)

**MADRID PROTOCOL INFORMATION**

(NOT AVAILABLE)

**PROSECUTION HISTORY**

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2009-11-24 - Registered - Principal Register

2009-10-20 - Law Office Registration Review Completed

2009-10-19 - Allowed for Registration - Principal Register (SOU accepted)

2009-10-19 - Assigned To Examiner

2009-09-28 - Statement Of Use Processing Complete

2009-09-08 - Use Amendment Filed

2009-09-28 - Case Assigned To Intent To Use Paralegal

2009-09-08 - PAPER RECEIVED

2009-03-31 - NOA Mailed - SOU Required From Applicant

2009-01-06 - Published for opposition

2008-12-17 - Notice of publication

2008-12-02 - Law Office Publication Review Completed

2008-11-26 - Assigned To LIE

2008-11-23 - Approved For Pub - Principal Register

2008-11-23 - Assigned To Examiner

2008-08-26 - Application Filing Receipt Mailed

2008-08-22 - New Application Entered In Tram

#### **ATTORNEY/CORRESPONDENT INFORMATION**

##### **Attorney of Record**

Jordan S. Weinstein

##### **Correspondent**

JORDAN S. WEINSTEIN  
OBLON, SPIVAK, McCLELLAND, MAIER  
1940 DUKE ST  
ALEXANDRIA, VA 22314-3451  
Phone Number: 703-413-3000  
Fax Number: 703-413-2220



Assignments on the Web > Trademark Query

**No assignment has been recorded at the  
USPTO**

**For Serial Number: 76692087**

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350.  
v.2.1

Web interface last modified: Apr 30, 2009 v.2.1

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